holds two licenses within a single Designated Market Area **(DMA).** that audience is counted only once for purposes of the national reach cap.[48]

The national multiple ownership cap is an outgrowth of radio policies adopted in the 1940s. Figure 24 presents a brief timeline.[49] Several points about the timeline are notable. First, the national cap was first implemented in a completely different economic environment. While the form and level of the national ownership cap has changed over time, its essential structure has remained unchanged. Second, it has evolved much more slowly than called for by those who have analyzed it. Indeed, under a Commission order issued in 1984, the cap was to have been eliminated by 1990.[50] However, in the face of considerable Congressional opposition to the relaxation of the cap, the Commission quickly reversed itself on reconsideration.'' As the analysis below will demonstrate. the Commission and its staff reached the correct conclusion in 1984.

B. The Rule is Costly in Today's Environment

The failure to relax *the* cap has adverse consequences for efficiency, competition, and consumers. There are at least three types of costs to which the current rule gives rise

---

48 *See In the Matter of Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting. and Television Satellite Stations Review of Policy and Rules.* Report and Order, released August 6. 1999, ¶ 1

49 For a more derailed history, see *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35. 73.240. and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations,* Report and Order, released August 1984, ¶¶ 11-18, and references therein.

50 *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.2413, and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations.* Report and Order, Docket No. 83 1009, released August 3, 1984

51 *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, und 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM. and Television Broadcast Stations.* Memorandum Opinion and Order. Gen. Docket No. 83-1009, released February 1, 1985

FIGURE 24
NATIONAL OWNERSHIP CAP TIMELINE

1940-1953: Numerical cap rises from *3* to 5 to 7 stations (in last case, no more than 5 allowed to be VHF stations).

1984: FCC concludes that cap does not protect diversity and may hinder localism and competition. Cap scheduled to sunset by 1990.

1984: In the face of Congressional opposition, FCC eliminates sunset provision. Cap set at 12 stations with a 25 percent reach.

1992: FCC Notice *of* Proposed Rulemaking seeks comment on proposals to relax the national multiple ownership limits, in **part** because resulting efficiencies "could permit the production of new and diverse, including locally produced, programming."[1]

1995: FCC Notice of Proposed Rulemaking states that relaxing the cap threatens neither competition nor diversity.[2]

1996: Telecommunications Act of 1996 removes numerical limit and raises reach cap to 35 percent.

1999: FCC determines that the audiences *of* two commonly owned stations in a single market count only once in applying the national reach limit.

[1] *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting,* MM Docket **No.** 91-221, **released June** 12, 1992, ¶ 11, **foornore omitted.**

[2] *In the Matter of Broadcast Television National Ownership Rules. Review of the Commission's Regulations **Governing Television Broadcasting, and Television** Satellite Stations Review* of ***Policy and Rules.*** **Further Notice of Proposed Rule Making.** MM Docket No.s 91-221 **and** 87-8, **released January** 17, 1995, ¶¶ 98 **and** 99

First, the cap limits the realization of economic efficiencies. There are economies of scale and scope associated with operating multiple stations jointly. For example. according to Fox, its owned and operated stations can share news equipment (*e.g.*, satellite news gathering trucks), staff, and market research strategies to reduce the average costs of producing regional news stories.[52] This is one of the reasons that most stations are run by group owners. By placing a ceiling on the size of group owners, the national ownership cap places a ceiling on the realization of economies of scale and scopc.[53]

Second. the cap blocks expansion of particularly well-run station groups. Even if there were no economics of scale or scopc, some station groups would be better run than others. Whether due to luck, greater investment, or superior hiring and training policies, some station groups can manage stations at lower cost and provide more desirable programming than can others. In the absence of regulatory restraints, station groups with superior skills would expand. Clearly, this would benefit those station groups. More importanr, it would also benefit viewers and advertisers — viewers because they would receive more desirable programming, and advertisers because they would have access to larger audiences. The national ownership cap thus harms the public interest by limiting the ability of efficient station groups to expand.

Third. and perhaps most important today, the national ownership cap limits the ability of networks and the stations that broadcast their programming to coordinate their

---

52 Joint Comments of Fox Television Stations, Inc. and USA Broadcasting, Inc. *In the Matter of 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MM Docket 98-35 (July 21, 1998) at 17.

programming and promotional activities and to align their economic incentives. The reason for this distortion is that the national cap limits network ownership of stations, and ownership is the institutional arrangement that most fully aligns the economic incentives of a network and a station broadcasting its programming. The increased profits derived from owned and operated stations are an important factor in determining a networks' willingness and ability to bid for costly event programming such as the broadcast rights to National Football League games, the Olympics. and theatrical movies. Station ownership also affects the networks' incentives to invest in programming developed solely for television, such as comedies and dramas. By limiting the extenr to which networks can own stations. the national multiple ownership rule thus reduces television networks' incentives and abilities to promote and compete for high-quality, high-cost programming dedicated to their non-subscription broadcast services

Because of their importance, it is worth examining in greater detail the coordination benefits associated with network ownership of stations and the mechanism by which programming investment incenrives are thus strengthened. Consider the incentives of a network that is choosing whether to invest in costly new programming. Moreover. consider the hypothetical situation in which the network owns none of the stations that broadcast its programming. Investing in higher quality programming will attract a larger audience and, all else equal, will allow the network to earn greater revenues from the sale of network advertising. The affiliates will benefit as well—in their case from the sale of their inventory of advertisements run during network programming. This benefit to the affiliates is not, however, a direct inccnrive for the

[53] This raises the question of why not every group owner is at the cap. It may be that some companies do not want to take that large a position in the broadcasting industry or for sonic other

network. As long as the terms of the affiliation contracts are fixed, the network derives no incremental benefits from the affiliates' increased profits. Hence, the network tends to invest too little in programming (or promotion) relative to the collective interests of the network and its stations as a system. This result is a consequence of the fact that the network bears all of the costs of investing in higher quality programming, but receives only a fraction of the benefits

To see this point most vividly, consider for argument's *sake* the opposite hypothetical. That *is*, suppose the network owned all of its stations. In that case, the network would internalize all of the costs and benefits of higher quality programming, and it would have incentives to maximize the overall financial performance of the network and the stations by making additional programming investments.

One might argue that if coordination were so important, then networks and their affiliates would find a way to coordinate with one another without common ownership. In fact. io some extent they have. For example, at various times ABC, CBS, and Fox have reached specific agreements with their affiliates io help finance the acquisition of broadcast rights to National Football League games. However, the ability to rely on am's length coordination as a solution to this problem is limited by at least four factors.

First, it is a cumbersome and ad hoc process that can take weeks or even months to work through.[54] A network going through such a process may not be able to move quickly enough to (... ograms that are put up for bid. Moreover, given the costs (in terms of m ... and effort) and complexity of the process, it would

reason lack access to capital and managerial assets needed to attain that scale

54 For example, Fox began discussions with its affiliates regarding their making contributions toward NFL broadcast rights in February 1998 and did not reach agreement until August 1998.

be impractical to use it frequently (*e.g.*, every time the broadcast rights for a major theatrical film came up for sale).

Second, even when the process of negotiating with affiliates **is** used, the coordination is unlikely to work as well as ownership—the internalization of financial returns through arm's-length deals always is incomplete.

A third problem is that my one station may ignore the effects that its actions have on other affiliates, as well as the network. A single station may reason that its refusal to pay for broadcast rights will not affect the overall network decision to acquire those rights. In this way, that station may be able to obtain the benefits of the broadcast rights without fully sharing in their costs. But if each station reasons that way, no one will support the program acquisition.

A fourth problem is that public policy limits the sorts of agreements that networks and affiliates can reach with one another.[55] Without full freedom to write contracts with one another, networks and affiliates are limited in their ability to harmonize their economic incentives in order to promote their common interests in providing competitive programming. 'Thus, regulation is an obstacle to network-affiliate coordination.

The national multiple ownership cap imposes efficiency losses on the economy by limiting the efficient expansion of group owncrs. Today, only two station groups—those of CBS and Fox—are near the national ownership cap.[56] One might incorrectly conclude that the small number of group owners near the national ownersh[illegible] hat the cap has little effect. However, discussions with network executi[illegible] suggest that some

---

55 Examples include the Right to Reject Rule and the Network Advertising Representation Rule

56 The fact that both are network station group5 is not surprising given rhar network groups benefit from coordination economies in ways other groups do not.

networks may be reluctant to make additional investments in stations until they know what the rules will he. Moreover, the current relaxation of the rule was put into effect in 1996, so the industry may not yet be in equilibrium. Further, even if only CBS and **Fox** wish to expand, the fact that they cannot do so harms viewers, advertisers, stations, and those networks.

Some supporters of the national cap argue that reform is unneeded because the networks earn sufficient profits from their current station groups to remain in business. This argument by the cap's supporters completely misses the mark. According *to* the networks. they do indeed continue to operate because they recoup some of their programming investments through their owned and operated stations. But the policy concern is not that the networks are about to go out of business. Rather, the concern is that the national multiple ownership tule inefficiently distorts network investments, to the detriment of networks and viewers alike." The fact that the networks find their owned and operated stations to be profitable — and that these profits provide incentives to invest in programming and promotion — is exactly why relaxing the national multiple ownership cap is in the public interest. Increased network ownership of stations will lead to increased incentives to invest in and promote the programming that will best satisfy viewer desires and thus attract the largest audiences.

The fact that networks want to purchase additional stations is itself an indicator that they believe they can run the stations more efficiently and earn greater profits than can their current owners. If not. the networks would not be willing to pay the current owners enough to induce them to cell their stations. The gains a network expects from station ownership must come from lower costs or increased audiences (which translate into greater advertising revenues).[58] When the gains are from lower costs, viewers and advertisers benefit through competition to serve them. And when the gains *are from* increased ratings, those increases reflect the fact that the new owner is doing a better job of satisfying viewer wants than was the old.

C. The Rule Does Not Promote Public Interest Goals

In theory, the national multiple ownership rule might create public interest benefits that outweigh the costs identified above. Proponents of the national cap argue that it protects the public interest in several different dimensions, including: (a) competition; (b) diversity; (c) minority ownership; and (d) localism.[59] However, an examination of the facts reveals that there is no evidence that the national ownership cap promotes any of these public interest goals.

The Rule Does Not Promote Competition.. Proponents of the national cap sometimes argue that it protects competition by preventing undue concentration of station ownership. Such assertions do not fit with the facts. The fundamental fact is that competition for viewers takes place at the local level. Only those stations in a viewer's local market can compete for his or her patronage. Thus, increased national ownership

---

57 This is one reason why arguments about the networks' accounting statements for their station groups are red herrings. There is no point in worrying about accounting—everyone appears to agree that there are aggregate profits and that stations get more of them than do the networks.

58 Logically. there could be an exception if a network expected buying one station to increase its bargaining power with other stations. There is, however. no evidence that any such effect arises. Moreover, it is implausible that the ownership of additional local stations would give networks additional bargaining power vis a vis affiliates in other cities given that the relevant markets are local

59 It is notable that promoting minority ownership and localism were not stated as rationales for the adoption of the national multiple ownership cap. See *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission's Rules Relating to*

Some might worry that elimination of the national ownership cap would lead to wholesale changes in industry structure that would give rise to unforeseen consequences. Such concerns are misplaced for at least two reasons. First, as just discussed, competition issues generally concern local ownership, not national. Thus, the national ownership cap and national ownership concentration generally are irrelevant. Second, most stations today are owned by groups who fall significantly below the national cap.[62] Thus, the national cap is not the primary factor limiting overall ownership concentration. While relaxing the cap would likely lead to the expansion of some group owners, particularly the network station groups, the overall effects on industry structure are unlikely to be sweeping. Most groups could increase their reaches today if they wished to do so, yet they have not made that choice.

Before concluding this discussion of competition, it is useful to examine one other argument that has been put forth by some proponents of maintaining national multiple ownership limits. These proponents assert that the cap is needed to protect the perceived economic: interests of the affiliates. Such an argument would have to be built on three faulty premises: (1) the networks have "too much" economic power when bargaining with affiliates; (2) relaxing the national ownership rule would significantly increase network bargaining power; and (3) as a result of the exercise of this power, viewers' needs would not be met. As discussed below, all three of these premises are invalid.

In analyzing the balance of economic power between the networks and their affiliates, two central findings of the economic analysis of bargaining are pertinent. The first is that the relative bargaining strengths of the different parties depend in pan on what

---

62 See Figure 19.A above.

alternatives are available to each if the bargaining process breaks down and the parties go rheir separate ways. These alternatives are known as *threat points*. No rational party will accept a worse bargain than it could get at its threat point.

A station's alternatives to affiliating with a given network include affiliating with a competing network or remaining independent and obtaining programming in the syndication market.[63] There are hundreds of independent stations in operation today.[64] And over the ten-year period from 1986 to 1995, there were 78 affiliate switches among ABC. CBS, Fox, and NBC.[65] The existence of independent stations, as well as the large number of affiliation switches in the mid-1990s, both illustrate the fact that stations have viable alternatives to affiliating with a given network.[66] On the other side of the bargaining table. a network's alternatives to affiliating with a particular television station are to affiliate with or purchase another station in that market, if any are available. In some cases. ihe network may be able to rely on cable distribution of its signal. Foi example, Fox and The WB Network both rely on cable as their sole sources of distribution in some markets.

---

63 In 1994. for example. television stations aired 259 different programs supplied by syndicators. which were packaged and distributed by over 48 separate companies. First-run programming accounted tor 75 percent of these shows, including over half of the **50** syndicated programs with the largest weekly gross market share. ***(An Economic Analysis of the Prime Time Access Rule,*** submitted by Economists Incorporated in MM Docket No. 94-123. March 7, 1995. at 17-18.)

64 See Figure 18 above.

65 Beutel, Kitt. and McLaughlin, "Broadcast Television Networks and Affiliates — 1980 and Today," National Economic Research Associates (C ober 27, 1995) attachment to *Comments of* the Network Affiliated Stations Alliance. *In* Ri *998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket 98-35 (July 21, 1998), Figure 3.

66 One of the most dramatic switches occurred in May, 1994 when the Fox network reached a deal uith the group owner New World in which several affiliates switched from one of the three original networks to Fox Within the next several months, at least 68 stations changed their affiliations in 37 markets (Julie Zier. "Fog of war engulfs affiliation battles; affiliation of television stations with networks," *Broadcasting & Cahlr,* December 5, 1994 at 50.)

Bargaining is also influenced by the fact that many network affiliates are controlled by large, sophisticated group owners. such as A.H. Belo Corporation, Cox Broadcasting, Inc. and Hearst-Argyle Television, Inc. There is simply no reason to believe that these companies, many of which own large numbers of properties in various media, are going to be coerced in their relationships with the networks. In many cases, group owners have affiliation agreements with different networks for their different stations.[67] Hence, these group owners are acutely aware of what is going on in the affiliation market.

Those who argue that regulation is needed to correct for an imbalance of market power often count the number of stations in a given Nielsen Designated Market Area and compare that with the number of networks. This approach is fundamentally flawed. It is a mistake to conclude that there is a problem in television markets in which there are more stations than networks. This is so for two reasons. First, these are the markets in which there are the most local outlets (even if one does not include cable channels) and thus are the markets in which there is likely to be the strongest competition to meet local viewer needs. Thus, these are markets in which market forces will most strongly promote localism and high-quality programming generally. Second, the existence of a number of independent stations in a market proves that network affiliation is not essential to station survival. Stations in these markets have viable alternatives to affiliating with a network, and the outcomes of network ing will reflect that fact.

---

[67] For example, Hearst-Argyle Television describes itself as the "largest ABC affiliate group, second largest NBC group and owner of two strong CBS stations." http://www.hearstargyle.com/info/letter.html, August 29, IYYY.

It is not a valid counter-argument to assert that affiliates are more profitable than comparable independents. While the data indicate that this is the case, this fact merely establishes that affiliates have strong bargaining positions and are able to appropriate many of the benefits from network affiliation for themselves, rather than having these benefits accrue to the networks. In fact, there is a rather perverse circularity at play in the argument that station owners need protection because affiliation is so valuable. The "logic" of this argument is the following:

> When stations negotiate with the networks over affiliation, the stations strike deals on terms that are very favorable to the stations. Therefore, the starions would be unhappy if they were not affiliates and they thus need protection in the bargaining process because their fear of losing affiliation would otherwise drive them to accept unfavorable terms.

By this logic. the stations would *nor* need protection if the networks reached *less* favorable contracts with them so that affiliation were no more profitable than being an independent!

Even if one believed that unequal bargaining power were a problem, it is difficult to see how the national multiple ownership rule provides a solution. The argument that the national cap protects affiliates from increased network bargaining power ignores the fact that stations in different local markets do not compete with one another. **A** network seeks the broadest coverage that it can obtain through a combination of affiliated and owned-and-operated stations. Increased network ownership of stations in one set of local markers does not reduce the value to the network of obtaining carriage th in other local markets.

Even if additional station ownership created incremental bargaining power for the networks, it does not follow that there is a public interest in blocking network station group expansion. In order to reach the conclusion that there was a public interest in blocking group expansion. one would have to establish that the hypothesized increase in bargaining power would have adverse effects on viewers or advertisers that outweighed the efficiency gains and increased network incentives to provide high-quality programming. Evidence of ill effects, let alone effects greater than the efficiency benefits. has not been put forth.

Here. a second fundamental conclusion from the economics of bargaining is relevant: there are incentives to reach agreements that maximize the total well being of the bargaining parties. When two parties bargain, each generally wants the best possible deal for itself. Even selfish bargainers, however, have incentives to cooperate in order to maximize the total returns that are available for them to divide between themselves. Thus. in the absence of obstacles to efficient bargaining, the outcome will tend to maximize the *joint* returns of the two parties. This finding is relevant because, today, television viewers have many more sources for programming than ever before, including an increasing number of local television stations and cable channels. Thus, there are greater competitive pressures for networks to work with their affiliates to offer programming that viewers want. whether network or local. The bottom line is that broadcasters today are collectively under greater pressure than ever to air the programs that viewers desire. The networks do not have financial incentives to weaken their affiliates to the point that their abilities to serve viewer interests are harmed.

In summary, the argument that affiliates need to be protected from the networks confuses ihe affiliates' private interest with the public interest. The two are very different. While some network affiliates may believe that the national multiple ownership rule serves their private financial interests, there is no evidence that this is a public interest benefit. Indeed, for the reasons discussed elsewhere in this white paper, the rule harms the public interest.

The National Ownership Cap Does Not Meaningfully Promote Diversity. Perhaps the argument most forcefully asserted by the national multiple ownership rule's proponents is that the cap promotes diversity. But such a claim misses a fundamental point: viewing is local. Hence, the national coverage of a given station group has no direct effect on diversity. Moreover. because of the efficiencies of group ownership, relaxation of the rule could promote increased competition in the provision of news and public affairs programming. In fact, in 1984 the Commission concluded that there was "important evidence that allowing increased group ownership will aid in providing consumer, with the variety of information they want."[68]

The Federal Communications Commission has distinguished at least three concepts of diversity: outlet, source, and viewpoint. *Viewpoint diversity* refers to attempts to ensure that media present a "wide range of diverse and antagonistic opinions and interpretations."[69] *Outlet diversity* refers to a "variety of delivery services (e.g., broadcast stations. newspapers, cable, and DBS) that select and present programming

---

68 *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, Report and Order. released August 3, 1984, ¶ 52. Footnote omitted.

69 *In the matter of 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, MM Docket 98-35. released March 13, 1998, ¶ 6.

directly to the public."[70] Finally, *source diversity* refers to "promoting a variety of program or information producers and owners."[71]

Although the Commission speaks in terms of outlet and source diversity, ultimately what matters to citizens is the degree of viewpoint diversity. There is no evidence that disparate station ownership on the national level has any effect on diversity of viewpoints available to local viewers. And because the national cap has no effect on the number of local television outlets that can be received in any given local market, the cap has no effect on source or outlet diversity in any event

There is one line of argument thar asserts that what is shown on a local station in one city can affect viewers in another city. This line of argument holds that a viewpoint first expressed in one area will later spread to other cities as the story is picked up by orhcr media. This argument, however, has several serious shortcomings.[72] First. there are a huge number of possible initial outlets for this type of transmission mechanism, including newspapers. magazines, and radio. The Internet, too, has been a source of many such stories. Thus, it is difficult to see how an increase in the size of certain group owners could have significant effects. Second, to the extent that group owners grant their local operations autonomy, increasing the size of certain group owners will lead to no reduction in the number of starting points for stories to spread nationally.[73] Third, even if

---

70 *Ibid.*

71 *Id.*

72 The Commission rejected this argument in 1984 on rhe grounds that: (a) group owners "do not impose monolithic viewpoints on local media outlets"; (b) there are a huge number of "idea sources" nationwide; and (c) group ownership has "offsetting advantages". *In rhe Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.210 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, Report and Order. released August 3, 1984, ¶¶ 61 and 62.

73 This point is discussed further in the analysis of localism below

one believed that group owners did impose centralized viewpoints, the transfer of a station from one group owner to another would have no diversity effects.

Lastly, the current form of the national multiple ownership rule is inconsistent with this argument. If effects on the transmission of stones across local markets were the source of concern. it would make no sense to limit the reach of station groups but not the number of individual stations held. By this line of reasoning, the current scope of the Sinclair Broadcast Group, Inc.—which owns 56 stations and reaches 14.2 percent of U.S. households — is a much greater threat to diversity than is expansion by CBS or Fox — who own 14 and 22 stations respectively but are close to hitting the 35 percent reach ceiling.[74] Thus. the Commission and Congress have implicitly rejected the cross-market-transmission argument by defining the national multiple ownership cap in terms of audience coverage.

Two recent decisions by the Federal Communications Commission also implicitly reject the argument that ownership in one city affects viewpoint diversity in others. In one decision. the Commission allowed a single entity to own two stations within the same market based on the number of independent voices in that *local* market.[75] This decision correctly reflects the fact that diversity occurs at the local — nor national — level

In a related decision. the Commission stated that an owner of two television stations in a single market would have the audience in that market count only once in calculating whether the group owner satisfies the 35 percent r [illegible] ate television

---

[74] See Figures 19.A and 19.B above.

[75] *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, and Television Satellite Stations Review of Policy and Rules*, Report and Order, MM Docket Nos. 91-221 and 87-8, released August 6, 1999, Section IV.

audience reach cap." The Commission rationalized this decision by saying that to do otherwise would result in '.double-counting." Taken together, these two recent decisions clearly demonstrate that the Commission cannot believe that increased national ownership is a threat to diversity.

To see why. consider the application of the national and local ownership rules to a hypothetical group owner that is up against the national ownership limit. Suppose the owner has a station in New York City. but not in San Francisco. Under the Commission's current rules, that group owner could purchase a second station in New 'York City. But that same group owner could not purchase a station in San Francisco. Hence, to allege that increased national ownership would threaten diversity would put the Commission in the following position. It would be asserting that a viewer in New York City would suffer a greater loss of diversity if the group owner bought a station in San Francisco than if it bought a second station in New York City!

Even if concerns about the number of distinct owners of broadcast properties at a national level were valid, it docs not follow that relaxing the national cap would reduce the total number of station owners. The reason is that most stations already are operated hy group owners. If the networks were to purchase additional broadcast properties to serve as owned and operated stations, in many cases the stations would simply be passing from one group owner to another.

It also is important to recognize that government regulation is unnecessary to protect diversity in today's marketplace. Vicwcrs enjoy a large number of sources of

---

[76] *In the Matter of Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting, and Television Satellite Stations Review of*

information and entertainment today. As discussed in Section III above, most households have access to a large number of broadcast outlets. And the majority of households subscribe to cable and satellite services offering huge numbers of channels. Increasing resources are being devoted to news programming on cable. In addition to national and international services such as CNN. Fox News, and MSNBC, local news and public affairs channels are being launched. For example, after first offering America's first 24-hour regional news service on Long Island, Cablevision now offers separate regional news services in Connecticut. New Jersey, and Westchester County, New York.[77] And A.H. Belo Corporation operates the NorthWest Cable News and the Texas Cable News. According to the Federal Communications Commission, "The number of regional and local news networks continues to grow, with 25 news services currently competing with local broadcast stations and national cable networks (e.g., CNN)."[78]

Moreover, radio and print media continue to provide huge numbers of sources, viewpoints, and outlets." Internet-based media are increasingly offering sources of news and entertainment. While one can question the full extent to which the Internet and television are substitutes, a national news web site clearly is a better source of information to a viewer in Washington, D.C. than is a broadcast station in Los Angeles

---

Policy and Rules Report and Order, MM Docket Nos 96-222, 91-221, and 87-8, released August 6, 1999, ¶ 1

77 Available at http //www.cablevision com/cvhome/frame/fentrain.htm, August 29, 1999

78 *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fifth Annual Report. CS-Docket No. 98-102, released December 23. 1998, ¶ 13

For documentation of the number of media outlets, see Mark R Fratrik. "Media Outlets By Market - Update," attachment to Comments of the National Association of Broadcasters. *In Re 1998 Biennial Regulatory Review . Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket 98 35, July 21, 1998, Appendix A.

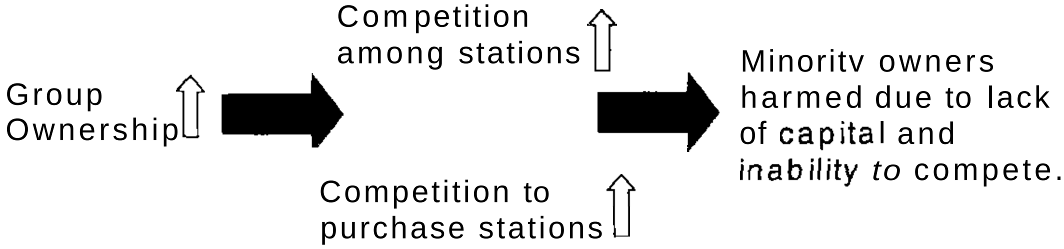
And while fewer people rely on the Internet for news than some other media. many citizens could patronize alternative outlets if they wished to do so. Indeed, one can rightly question the significance for diversity analysis of the claim that more people get their news from television than from any other medium. The fact that a citizen chooses not to take advantage of a print or electronic option available to him or her does not mean that the option is not there as a source of diverse viewpoints.

The Rule Does Not Promote Minority Ownership. Some proponents of the national multiple ownership rule have claimed that it somehow promotes minority ownership. Figure 2.5 presents a schematic representation of the theory of how increased group ownership would adversely affect minority ownership. According to this theory, group ownership will strengthen competition in two areas. First, there will be increased competition to purchase stations as group owners attempt to expand to take advantage of economies of scale and scope. Second, there will be increased competition among stations as the efficiencies of group ownership are passed through to viewers and advertisers.

There are several fundamental problems with this theory evident at the outset. First, it is predicated on the belief that increased competition is against the public interest. Wet, a fundamental tenet of telecommunications policy—and U.S. economic policy generally-—is that competition is good.

Second, proponents of the theory have put forth little or no factual support for their theory of alleged harm. There is no evidence that past or current national ownership caps promote significant minority ownership or that removing the current cap will harm minority ownership. Using National Telecommunications and Information

FIGURE 25
A THEORY OF MINORITY OWNERSHIP EFFECTS



Administration data, Figure 26 provides recent trends on minority ownership of television stations.

The figure illustrates two points. First, as discussed earlier, the number of minority owned stations is small. Hence, by this measure of minority ownership, the national ownership cap has had little success despite the fact that it has been in place for almost half a century. Second, there is no evidence that relaxation of the cap in 1996 has had any effect on the number of minority owned television stations. While the number of minority owned stations dropped in 1997-98 from its 1995 peak, the number of minority owned stations remains higher than it was in 1993, when the tighter cap was in force.

The theory that group ownership harms minority ownership is also undermined by the fact that, the pervasiveness of group ownership notwithstanding, there are many individually owned stations. As shown in Figure 18 above, it is not the case that the groups have bought up all of the stations and crowded out potential minority owners. In 1997 there were still 251 separately owned stations.

Other ownership data also are relevant. As discussed earlier, most stations are owned by groups that are significantly below the national cap. Thus, the national cap is not driving overall concentration and competition in broadcasting. Relaxing the national ownership reach cap would be unlikely to lead to large changes in most station groups.

Network station gr [illegible] s most likely to expand because they benefit from coordination econon [illegible] as economies of scale and scope. In any expansion, networks would certainly take into account the advantages of purchasing their own affiliates because of the cost and ratings implications of affiliate switches and the

FIGURE 26
MINORITY OWNERSHIP IN THE 1990s

Year	1993	1994	1995	1996-97	1997-98
Number of Stations	29	32	38	38	32

Source: http://www.ntia.doc.gov.opadhome/minown98/appendix-b.htm, May 26, 1999.

existence of long-term contractual obligations. But, as discussed below, individually-owned, affiliated stations account for only a small percentage of the networks' national coverage.[80] Thus, even if the networks were to purchase additional stations, it is likely they would buy group-owned stations and unlikely that they would **be** replacing significant numbers *of* individually owned stations. And. as with the argument about diversity, if a lack of stations available for purchase were a valid public policy concern, then a ceiling on the total number of stations owned would be more appropriate than a limit on national audience reach.

The failure of the national ownership cap to promote minority ownership should not be surprising in the light of the fact that the national ownership cap fails to address the underlying problem. The Commission has repeatedly identified the lack of access to capitol os an entry barrier.[81] In 1995. the Commission explicitly stated that "it is not the price per se that is the problem, but minorities' ability to finance the purchase of a higher priced station."" More recently, some have questioned whether minority media ownership is hindered by advertiser discrimination against minority owned stations. Whether or not minority ownership is harmed in this way, the national multiple ownership cap does nothing to address the problem.

---

80 See Figure 27 below

81 For a hrief discussion of the evidence that lack of capital is a harrier to media ownership by women and minorities, see *In rhe Matter of Policies* ***and*** *Rules Regarding Minority and Female Ownership of Mass Media Facilities,* Notice of Proposed Rulemaking, MM Docket No.s **94**-149 and 91-140, released January **I!.** 1995, ¶¶11-13.

82 *In the Matter of Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting,* and *Television Satellite Stations Review of Policy and Rules,* Further Notice of Proposed Rule Making. MM Docket No.s 91-221 and 87-8, released January 17, 1995. ¶94

It is also important to recognize that there are minority investments taking place in other electronic media, particularly cable and the Internet. Such investments should not be surprising for at least two reasons. First, these areas have been exhibiting much more rapid growth than has broadcast television. Second, to the extent that ownership is driven by a desire to serve minority communities. other media are better suited to targeting.” One example of such targeting is the Black Entertainment Television network on cable television. Similarly. Lifetime is targeted at women today, and Oxygen is a planned cable channel that will also be aimed expressly at women. Other cable channels (*e.g.*, Galavision) target Hispanic viewers. There are also web sites aimed at serving the needs and interests of women and minorities. Examples include Black Voices.com, ivillage.com. LatinoLink, NetNoir, Oxygen.com, and Women.com.[84]

Black Entertainment Television’s parent, BET Holdings, Inc., is launching a web site aimed at African Amcricans. BET Holdings is a good example generally of the fact that minority media investments may be targeted toward cable, the web, and other media that can be more focused.[85] In addition to Black Entertainment Television, BET runs cable channels BET on Jazz and Heart & Soul Magazine.[86]

---

83 Of course, there are broadcasters who target minorities. including Univision and Telemundo, both of whom gear their programming toward Hispanic audiences.

84 See, for example. Diana See, "Minority sites build community and business on the Web." CNN Interactive, http://cnn.com/TECH/computing/9809/30/minority.idg/index.html (posted September 30, 1998). See also Saul Hansell, “Big Companies Rack a New Web Site Aimed at Blacks.” *The New York Times*, 12 August 1999 at C5

85 Of course, not all of the companies investing in cable channels and web sites targeted to women and minorities are majority owned by women and minorities.

86 Shannon Henry. “BET Plans Site tor African Americans,” available at http://search.washingonpost com/wp-srv/Wplate/1999-08/12/1861-081299-idx.html, August 12. 1999

The Rule Does Not Promote Localism. A final claim put forth in support of the national multiple ownership rule is that is promotes localism. However, once again an examination of the facts does not support the claim that the national cap promotes its purported public interest objective.

First, there is no evidence that non-local owners fail to serve local needs. Indeed, the available data show that network owned and operated stations are active providers of local news and public affairs programming.[87] Moreover, the Commission noted in 1995 evidence that: (a) group-owned stations are more likely to editorialize, and (b) editorial and reporting decisions are often made autonomously at the local level within station groups.[88] Second, the vast majority of stations already are operated by group owners. Even small groups often own stations that are widely dispersed geographically. All station groups are "local" in only one market, regardless of their total reach.

Even if one were concerned that group owners did not serve local interests, it does nor follow that relaxing the national cap would significantly reduce the total number of single-station affiliate owners. The reason is that most affiliates already are run by group owners. Figure 27 summarizes the data for ABC, CBS, and **Fox** affiliates. The figure presents the networks' coverage of U.S. households by type of station ownership. As the numbers in the final column show, only a small percentage of U.S. households are served

---

87 *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, Report and Order, released August 3, 1984, ¶¶ 44-51.

88 *In the Matter of Review of the Commission Regulations Governing Television Broadcasting and Television Satellite Stations Review of Policy and Rules*, Further Notice of Proposed Rule Making, MM Dockets Nos. 91-221 and 87-8, released January 17, 1995, ¶96.

FIGURE 27
NETWORK NATIONAL COVERAGE BY TYPE OF STATION OWNERSHIP[1]

	Owned and Operated[2]	Group Owner Affiliates	Individually Owned Stations
ABC	24%	65%	10%
CBS	34%	64%	2%
Fox	41%	46%	9%
NBC	28%	54%	17%

Notes:

[1]The UHF discount has not been applied in calculating the household coverage reported in this figure.

[2]The Hicks. Muse. Tate and Furst group holds a non-attributable ownership interest in the stations comprising 2.92 percenr coverage of US households. According to NBC, the stations are reported to the FCC as owned by NBC.

Source: Networks

by individually owned network affiliates. In fact, these numbers overstate the extent to which affiliated stations are individually owned. With the exception of CBS, the available data reported here indicate only whether a given entity owns one or multiple stations affiliated with a given network. For example, a corporation that owned two stations, one an ABC affiliate and the other an NBC affiliate, would be reported by each network as owning an individual station. The percentage of stations owned by true single-station owners is likely to he close to the percentage reported by CBS. The upshot of this analysis is the same point made in the analysis of diversity above: if the networks were to purchase their affiliates, the most likely scenario is that the stations would simply he passing from one group owner to another.

Lastly, to the extent that localism is important to viewers, there are market incentives for broadcasters to serve local needs. Moreover, one would expect those group owners who are particularly good at meeting the needs of the various viewer communities they serve to he more successful and thus to expand. Hence, larger station groups may benefit local interests.

The Rule Cannot he Justified as a Quid Pro Quo for Free Spectrum. A final attempt at justifying the rule is to assert that group owners must accept the national reach cap as a cost of being given licenses to the broadcast spectrum for free. There are three fatal flaws with this line of reasoni. . shown above, the national multiple ownership rule generates social cos . . . no social ben its. Thus, whether or not broadcasters got their licenses for *free*, the national multiple ownership cap harms the public interest

Second, even if there were some way in which obtaining spectrum for free justified the national multiple ownership rule, the fact is that the vast majority of current owners paid for their spectrum licenses. The largest group owners purchased virtually all of their stations. and the license values were capitalized into station purchase prices.[89] Moreover, in some cases. these sales triggered substantial tax payments

Third, it is illogical to assert that somehow only the largest group owners should bear the costs of the rule given that they are no different from other owners in terms of how they obtained their spectrum licenses. But that is just what the national multiple ownership cap does

D. Summary Analysis of National Multiple Ownership Rule

As the above discussion makes clear. there is no evidence that the national multiple ownership cap serves any useful purpose. The available data and economic analyses support the conclusions that:

- Relaxation of the reach limit does not threaten competition and indeed can be expected to strengthen broadcast television networks as competitors.
- Diversity is relevant at the local level and is unaffected by the national cap.
- The cap is an expensive and ineffective means of promoting minority ownership
- There is no evidence that a group owner whose stations collectively have broad national coverage is less committed to localism than is a group or individual station owner whose stations have more limited coverage.

The national multiple ownership rule does, however. have costs:

- The cap limits the realization of economics of scale and scope

89 For example, when Disney purchased Capital Cities/ABC, Westinghouse purchased **CBS**. and Fox purchased New World. the prices the neu **owners** paid reflected the value of the licenses (as well as other assets) held by the old owners

- The cap blocks expansion of particularly well-tun station groups.
- The cap limits the abilities of networks to coordinate with stations, and thus it reduces the incentives and abilities of networks to compete for programming and promote it.

By creating these artificial costs, the national ownership cap distorts investment incentives. Specifically, it reduces the incentives to invest in non-subscription broadcast television in general as well as relative to investments in other means of distribution

The implication is clear: The national ownership cap is not appropriate in today's economic environment. The public interest would best be served by the immediate elimination of the national multiple ownership cap.

V. CONCLUSION

The regulatory regime governing broadcast television was put in place in a very different economic environment and this regime is no longer appropriate. Terrestrial broadcasters face far more competition for advertising dollars, programming, and viewers than they did when the rules were adopted. For years, policy makers have talked about reform of the national ownership and network-affiliate rules, but little has happened. It is time to update the record. conduct the analysis, and—at long last—fully reform the rules.

Two members of the Commission staff summed up the issue well in their 1991 working paper:

> Existing broadcast regulations may prevent broadcasters from adopting more efficient forms of organization and offering services the public would value. Relaxing or eliminating such rules would allow broadcasters

to compete more effectively, and would facilitate the continued provision of valued over-the-air services.[90]

It is clear that today some of the rules still in force no longer serve the public interest. As shown by the analyses presented in this white paper. the national multiple ownership rule no longer serves to protect the public interest. Indeed, continued enforcement of this rule is harmful to the public interest. This is only one of the rules that govern the economic structure of broadcast television today. It may well be that none of the rules predicated on the lack of competition is in the public interest. Policy makers should take a serious look at all of the rules and take appropriate action.

This is not the first time that there has been concern that an inefficient regulatory regime for broadcast television is harming the public interest. Yet, terrestrial broadcasting has survived. So why is there any need to act now? The answer is twofold. First. non-subscription broadcast television faces greater competition than ever before, and the effects of that competition on the nature of programming are being felt by broadcasters and viewers today. There are several developments, including:

- Networks are being outbid by cable networks for first-run broadcast rights to movies.[91]
- According to Fox. cable competition so eroded the audience for their weekday morning programming for children, that the network abandoned that daypart for children's television.

---

90 Florence Setzer and Jonathan Levy. *Broadcast Television in a Multichannel Marketplace.* Federal Communications Commission Office of Plans and Policy Working Paper No. 26 (June 1991) at x.

91 *See* John Dempsey, "USA Network to sharr movie rights with CBS. Fox." *Yahoo! News* (June 15, 1999). Similarly. "The TNT cable neiwork has been building a reputation for acquiring rights to first run movies and giving them their commercial television premieres" (Lawrie Mifflin, 'Tis Nobler to Synopsize," *The New York Times*, September 1, 1999 at B8.)

These developments are of regulatory relevance because inefficient public policies limit broadcast television networks and stations' abilities and incentives to compete for programming and to provide it on a non-subscription basis. These effects are being felt by viewers and advertisers today.

The second reason there is a public interest need to act now is that current policies *are* creating long-term costs. These costs are being created by distortions in investment incentives. Network owners have greater opportunities to redirect their investment efforts (both financial and creative) than ever before. **As** the following examples illustrate, network owners are taking advantage of these opportunities:

- ABC is launching a new soap opera channel. But instead of taking advantage of newly allocated digital broadcast spectrum to distribute the channel as a non-subscription over-the-air service, **ABC** is putting this new channel on cable. The economics of cable's dual revenue stream were too attractive in comparison with the opportunities available in the current economic and regulatory environment of broadcast television.
- Similarly, when Fox decided to go into the national news business, it launched a cable network. FOX News Channel, rather than develop a national news programming service for its broadcast network.

The fact that the networks are branching into other services is ***not*** in itself a problem. Indeed, it is privately and socially valuable for the networks to make use of their skills and assets in these other services. Rather, the problem arises when regulation *distorts* these investment decisions. By inefficiently reducing economic returns in broadcasting, regulation drives the networks to direct more of their financial and creative resources toward cable properties and other distribution platforms than is socially desirable. It is also important to recognize that, once broadcasters start investing in a particular direction, it may be hard *to* reverse the effects of regulatory distortions. Consequently, the time to reform broadcast television regulation is now.

ABOUT THE AUTHOR

Michael L. Katz is the Edward J. and Mollie Arnold Professor of Business Administration at the University of California at Berkeley. He also holds an appointment as professor in the Department of Economics and serves as the Director of the Center for Telecommunications and Digital Convergence. He has twice won the Earl F. Cheit award for outstanding teaching.

Dr. Katz specializes in the economics of industrial organization, which includes the study of antitrust and regulatory policies. Dr. Katz has published numerous articles on the economics of networks industries, intellectual property licensing, telecommunications policy, and cooperative research and development. He has also written a microeconomics textbook. He serves on the editorial boards of *The California Management Review* and *The Journal of Economics and Management Strategy*.

In addition to his academic experience, Dr. Katz has consulted on the application of economic analysis to issues of antitrust and regulatory policy. He has served as a consultant to both the U.S. Department of Justice and the Federal Communications Commission on issues of antitrust and regulatory policy in telecommunications markets. Dr. Katz served as Chief Economist of the Federal Communications Commission from January 1994 through January 1996. He participated in the formulation and analysis of policies toward all industries under Commission jurisdiction, including broadcasting, cable. telephone, and wireless communications

Dr. Katz holds an A.B. *summa cum laude* from Harvard University and a D.Phil. from Oxford University. Both degrees are in economics.